

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215471.2**DATE:** October 2, 1984**MATTER OF:** Behavioral Systems Southwest, Inc.**DIGEST:**

1. Where awardee takes no exception to the solicitation terms in its bid, GAO has no basis for finding the bid nonresponsive.
2. Protest against failure of awardee to submit proof with bid that solicited facility was zoned for intended use is denied where uncontroverted evidence shows that proof was submitted with bid.
3. GAO does not generally review protests of affirmative determinations of responsibility.
4. Submission of below-cost bid is not illegal.
5. Whether contractual obligations are met during performance of contract is a matter of contract administration which GAO will not consider.

Behavioral Systems Southwest, Inc. (BSS), protests the award of a contract for housing aliens to D. J. Findley, Inc. (Findley), under invitation for bids (IFB) No. SPD84-47 issued by the Immigration and Naturalization Service, Department of Justice.

BSS contends that Findley's bid should have been rejected as nonresponsive because of an alleged failure to install a working sprinkler system and hard wire smoke detectors in the building to be used for performance of the contract as required by the IFB. BSS states it leased the building prior to award of this contract and, thus, knows that the building did not meet these requirements at bid opening and, to the best of its knowledge, still does not. BSS also alleges that Findley did not submit proof with its bid that the facility is zoned for its intended commercial use as required under the IFB. BSS also contends Findley submitted a below-cost bid and cannot perform the contract at the price bid.

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BSS argues further that Findley should have been found nonresponsible. In support of this contention, BSS alleges that Findley is financially unable to meet its contractual obligations. BSS argues, in addition, that Findley has no record of previous experience in providing this type of service, has a tax lien filed against it, lacks trained personnel to perform the work and lacks American Correctional Association (ACA) certification. We note in this connection that ACA accreditation was not an IFB requirement, but BSS essentially contends that failure to obtain ACA certification is further evidence of Findley's lack of responsibility.

We deny the protest in part and dismiss it in part.

A bid is "responsive" if, as submitted, it is an offer to perform the exact thing called for in the IFB, without exception. Propper Manufacturing Company, Inc., B-206193, Feb. 3, 1982, 82-1 C.P.D. ¶ 86. Since Findley did not take exception to the IFB requirement that the building to be used would have a working sprinkler system and multiunit, hard wire smoke detectors, we have no basis for finding its bid nonresponsive.

BSS also alleges that the awardee failed to comply with the IFB requirement that bidders submit proof with their bids that the facility (property) bid is zoned for its intended use. We note, parenthetically, that BSS leased the property for the same purpose under the previous year's contract and we assume that it used the building in compliance with the zoning law. In any event, the record shows that Findley submitted with the bid a business license/housing permit for the premises to be used. The contracting officer accepted this license/permit as evidence that the facility was properly zoned for commercial use. There is no evidence in the record which rebuts the agency's view and none has been offered by the protester. Under these circumstances, we deny this aspect of the protest.

With regard to the allegation that Findley is a nonresponsible bidder, the record shows that, prior to award to Findley, the contracting officer made an affirmative determination of responsibility. Our Office does not review protests of affirmative determinations of responsibility

unless fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Dosimeters Corporations of America, B-209314, Oct. 29, 1982, 82-2 C.P.D. ¶ 391; Propper Manufacturing Company, Inc., B-206193, supra. Neither exception is applicable here.

BSS also asserts the agency accepted a below-cost bid. The submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible prospective contractor. Whether the low bidder can perform the contract at the price bid is a matter of responsibility which we will not review except in limited circumstances not applicable here. TECOM Incorporated, B-215291, June 19, 1984, 84-1 C.P.D. ¶ 644.

Finally, we dismiss BSS's allegations that Findley is not meeting its contractual obligations. In this connection, whether a contractor complies with its obligations under a contract is a matter of contract administration and is not for resolution under our Bid Protest Procedures, 4 C.F.R. part 21 (1984). The protest procedure is reserved for considering whether an award of a contract complies with statutory, regulatory and other legal requirements rather than with postaward performance or other administrative matters. ASC Medica Service, Inc., B-213724, Dec. 30, 1983, 84-1 C.P.D. ¶ 45.

for Milton J. Arosen
Comptroller General
of the United States